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10/760,130

01/16/2004

Terrence John Morris

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PATENT GROUP 2N

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EXAMINER

BASICHAS, ALFRED

ART UNIT

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/760,130  
Filing Date: January 16, 2004  
Appellant(s): MORRIS, TERRENCE JOHN

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Stephen D. Scanlon  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed April 28, 2008, appealing from the Office action mailed September 4, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

### **(8) Evidence Relied Upon**

3,733,170	KOBAYASHI et al.	5-1973
5,387,399	NISHIDA et al.	2-1995
JP01203064	ARAI	8-1989

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1, 6, 9, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi (3,733,170) in view of Arai (JP01203064). Kobayashi discloses substantially all of the claimed limitations including, among other things, a burner head having a cylindrical wire mesh cylindrical tube member with support members in and out of the tube, and rings of wire running axially. Kobayashi does not specifically recite the use of wedge wire. Arai teaches a cylindrical tube made of wedge wire in order to provide a fine spray. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the screen arrangement taught by Arai into the invention disclosed by Kobayashi, so as to provide a fine spray.

2. Claims 3-5, 7, 8, and 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi (3,733,170) in view of Arai (JP01203064), and further in view of Nishida (5,387,399). The combination of Kobayashi in view of Arai teaches substantially all of the claimed limitations but does not specifically recite the claimed element orientations. Nishida teaches a screen for a burner (see at least figs. 9a-c) including various element orientations (see at least figs. 2a,3a,7,8,10,11). Nishida teaches that the variations have distinct characteristics and uses depending on the needs of the device (see at least col. 7, line 60, through col. 8, line 42). Accordingly, it would have been obvious at the time of the invention to incorporate the claimed wedge shape and element orientations as made obvious by Nishida into the invention taught by the above combination, so as to provide for the uses and needs of the device.

#### **(10) Response to Argument**

In response to appellant's argument that Arai is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the invention deals with a burner nozzle. However, a burner nozzle is little more than a fluid nozzle. Accordingly, looking to nozzles for fluids other than fuel, but having the desired characteristics is not unreasonable. It has been a long held practice in the burner art to

look to the fluid sprinkling art for fluid nozzle characteristics when searching for burner nozzle characteristics.

Appellant asserts that analogous prior art not relied upon teaches away and cites Brooker as evidence in establishing negative aspects of Arai's device. Specifically appellant asserts that Brooker teaches that a wedge wire would extinguish a flame passing therethrough. Appellant is clearly misreading Brooker. In fact, Brooker states that "the size of the gaps....acts to extinguish the flame passing therethrough..." (see at least col. 5, lines 3-7). While in the case of Brooker the shape of the wire may have an incidental effect, it is the gap size that is the main if not sole cause for extinguishing the flame.

In response to appellant's argument that the screens of Kobayashi and Arai are not interchangeable, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). While the rejection clearly recites motivation that would suggest to one having ordinary skill in the art to modify Kobayashi as taught by Arai, appellant has failed to provide any evidence to substantiate the assertion that Arai is an inferior product.

Appellant further asserts that Nishida does not remedy or specifically recite each and every orientation recited in the claims. Nevertheless, Nishida does teach that such

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variations would have been obvious depending on the desired use of the device and would be attainable through routine experimentation.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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